

No. 20374

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)
)
Appellant,)
)
vs.)
)
HOWARD C. HAYES,)
STANWOOD P. WHITELEY, et al,)
)
Appellees.)

FEB 10 1967

SUPPLEMENTAL BRIEF
FOR THE APPELLEES

On appeal from the United States District Court for the
District of Alaska

R. BOOCHEVER
of Attorneys for Appellees

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ARGUMENT

I

THE DECISION OF THE DISTRICT COURT SHOULD BE
AFFIRMED FOR THE REASON THAT THE GOVERNMENT'S
CLAIM WAS BARRED BY APPLICABLE STATUTE OF
LIMITATIONS

The appellees, defendants below, raised as an affirmative defense that the applicable Alaska Statute of Limitations barred the subject suit (R. 10). This same defense was set forth by means of motion for summary judgement which was denied by the Court below after having rendered its memorandum decision dated May 22, 1963 (R. 12-14). The sole basis for denying the motion for summary judgement was that existing authorities indicated that the United States was not bound by state statute of limitations under the circumstances here involved. Subsequent to the decision of the district court, the Supreme Court of the United States rendered its decision in the case of United

States v. Ethel Mae Yazell, 15 L.Ed. 2d 404, 86 S.Ct. _____, (Jan. 17 1966), which decision alters the prior law as to the applicability of state law pertaining to commercial transactions conducted by the government and clearly indicates the judgement for appellees should be affirmed for the additional reason that the claim was barred by the statute of limitations.

At the outset, it is to be noted that the trial court's judgement should be sustained upon any theory established by the pleadings and supported by the proof. Jaffke v. Dunham, 352 U.S. 280, L.Ed. 2d 314 (1957). While appellees feel that the decision of the Court below is amply supported for the reasons advanced by that court, as a result of the case of United States v. Ethel Mae Yazell, supra, decided subsequent to the decision of the Court below, the district court's decision should further be sustained for the reason that the claim was barred by the applicable statute of limitations, A.S. 09.10.050.

The subject suit originated in a commercial transaction in which a governmental corporation, the Reconstruction Finance Corporation, negotiated a loan relying on all of the accepted protections to be found in similar transactions enacted between private individuals or corporations. Under these circumstances the Alaska Statute of Limitations, A.S. 09.10.050, applied. This section specified that an action "upon a contract or liability expressed or implied" must be "commenced within six years". The note on which suit was brought in this case was executed on

May 28, 1953, and had a maturity date of December 15, 1955. The guarantee on which this suit was brought was executed on May 28, 1953. Suit was not filed until September 24, 1962.

The suit was thus brought more than six years after the date on which the promissory note matured and the statute of limitations would be applicable unless the defense is barred in a commercial transaction resulting in a suit brought by the United States.

In the case of United States v. Ethel Mae Yazell, supra, the Federal Government sought recovery of the balance due on a loan made by the Small Business Administration. At the time that the loan was made, Texas law provided that a married woman could not bind her separate property unless she first obtained a court decree removing her disability to contract. Mrs. Yazell had not obtained such a court decree. The Supreme Court held that the state rule governed and that recovery could not be had against Mrs. Yazell, although Mrs. Yazell had signed the note with her husband which indicated that he and she were "doing business as" Yazell's Little Ages. The Court summarized its position at 15 L. Ed. 2d at 409 as follows:

"The issue is whether the Federal Government may voluntarily and deliberately make a negotiated contract with knowledge of the limited capacity and liability of the persons with whom it contracts, and thereafter insist, in disregard of such limitation, upon collecting (a) despite state law to the contrary relating to family property rights and liabilities, and (b) in the absence of federal

statute, regulation or even any contract provision indicating that the state law would be disregarded."

Similarly, in the subject case where the government voluntarily and deliberately negotiated a contract with knowledge of the Alaska Statute of Limitations it cannot disregard that statute "in the absence of federal statute, regulation or even any contract provision indicating that the state law would be disregarded". The Court further stated at page 411:

"Clearly, in the case of these SBA loans there is no 'federal interest' which justifies invading the peculiarly local jurisdiction of these States, in disregard of their laws, and of the subtleties reflected by the differences in the laws of the various States which generally reflect important and carefully evolved state arrangements designed to serve multiple purposes."

The Court concluded at page 413 and 414:

"There is no problem in complying with state law; in fact, SBA transactions in each State are specifically and in great detail adapted to state law. There is in this case no defensible reason to override state law unless, despite the contrary indications in *Fink v O'Neil* and elsewhere as has been set forth, we are to take the position that the Federal Government is entitled to collect regardless of the limits of its contract and regardless of any state laws, however local and peculiarly domestic they may be."

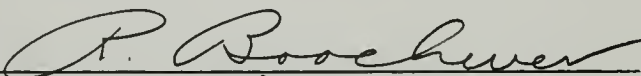
There is absolutely no reason why the government when entering the commercial field should not be bound by the applicable state law in the same manner that large banks and corporations are bound by those provisions. There is nothing in the

statute establishing the Reconstruction Finance Corporation or in the loan documents themselves indicating that the state statute of limitations would not be applicable. Accordingly, the judgement of the Court below (which is amply supported by the reasons advanced by the Court) should further be sustained for the additional reason that the claim is barred by the applicable Alaska Statute of Limitations.

DATED at Juneau, Alaska, this 15th day of April, 1966.

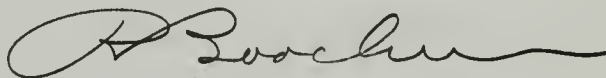
Respectfully submitted,

FAULKNER, BANFIELD, BOOCHEVER & DOOGAN

By 
R. Boochever
of Attorneys for Appellees

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with these rules.


R. Boochever

